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CONSIDERATION OF ISSUES RELATING TO THE PROTECTION AND PROMOTION OF HUMAN RIGHTS, INCLUDING THE IMPLEMENTATION OF INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENTS

Joint statement of African Ministers for Justice on the administration of justice and human rights

Report of the Secretary-General

1. At its forty-fifth session, the General Assembly adopted resolution 45/155 of 18 December 1990, entitled "World Conference on Human Rights". In paragraph 10 of that resolution, the Assembly requested, among others, regional organizations concerned with human rights to undertake reviews and submit recommendations concerning the Conference and the preparations therefor through the Secretary-General.

2. The present document is submitted pursuant to that resolution. It contains, at annex, a joint statement of Attorneys-General and Ministers for Justice of east, central and southern African States on the administration of justice and human rights issued in Nairobi on 7 October 1992.

GE. 92-14337 (E)

Annex

JOINT STATEMENT OF ATTORNEYS-GENERAL AND MINISTERS FOR JUSTICE OF EAST, CENTRAL AND SOUTHERN AFRICAN STATES ON THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS HELD IN NAIROBI, KENYA 5-7 OCTOBER 1992

The Ministers for Justice/Attorneys-General of Botswana, Malawi, Kenya, Lesotho, Swaziland, Uganda, United Republic of Tanzania and Zimbabwe held a Consultative Meeting in Nairobi, Kenya from 5-7 October, 1992 to exchange views on the administrtion of justice and human rights. The Consultative Meeting, which was convened by Hon. S. Amos Wako, the Attorney-General of Kenya, was preparatory to the Regional Meeting for Africa which is scheduled to take place in Tunis, Tunisia in November, 1992, to discuss the agenda for the World Conference on Human Rights which is due to be held in Vienna, Austria in June 1993.

The Ministers/Attorneys-General deliberated at length on a number of issues related to and touching upon the administration of justice and human rights in the context of Africa and agreed as follows.

I. RESPECT, PROMOTION AND PROTECTION OF HUMAN RIGHTS

The validity and universality of human rights are indisputable and these rights must be protected, upheld and promoted by all regardless of the diverse political, economic and cultural systems prevailing in the world. We are, therefore, committed to the standards set forth in the Universal Declaration of Human Rights. It is the primary responsibility of Government to give effect to these rights. Towards this end, the Ministers for Justice/Attorneys-General, in their capacities as custodians of the law or the principal legal advisers to their respective Governments, have a special duty to ensure that the constitutions and laws of their States as they relate to human rights, and the international human rights instruments, are observed and respected.

The constitutions and laws make provision for the protection of these rights. The Ministers for Justice and Attorneys-General should ensure that the legal provisions relating to human rights are in compliance with international human rights standards.

The principle of the indivisibility and interdependence of Human Rights has been recognized and must be given effect in policy formulation and implementation. Civil and political rights cannot be disassociated from economic, social and cultural rights in their conception as well as universality and the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights. None of these rights should be given precedence over the others.

The primary responsibility for implementing and giving effect to these rights is at the national level. Consequently, the most effective system or

method of promoting and protecting these rights has to take into account the nation's history, culture, traditions, norms and values. There is no single universally valid prescriptive model or system. Whilst the international community should be concerned about the observance of these rights, it should not seek to impose or to influence the adoption of their criteria and systems on Africa. It should be sensitive to the unique aspects of each situation and establish impartiality and genuine concern for human rights problems by objective and acceptable factual analysis of events and situations.

II. ADMINISTRATION OF JUSTICE AND DEVELOPMENT

The rule of law and the administration of justice is a prerequisite to sustainable economic and social development. Laws are an integral part of the development process. Failure of the justice system negatively affects business and economic development. At the national level, governments in setting their budgetary priorities have tended to marginalize the administration of justice. At the international level, regional or international financial institutions and donors have not considered the administration of justice as essential to or part of the development process and have consequently ignored assistance to this sector.

Recognizing the indispensability of the rule of law and the administration of justice to the development process, we call upon our Governments to allocate the necessary resources to enable those entrusted with the administration of justice to carry out their tasks. Similarly, we particularly call on the international community to recognize and give the necessary financial and technical assistance for the administration of justice.

III. CONSTRAINTS MILITATING AGAINST THE FULL REALIZATION OF HUMAN RIGHTS

Human rights do not exist in a vacuum. Their violation involves real people who are the victims of such violations. Many African Governments have often been accused of either gross human rights violations or indifference to them. While acknowledging the truth of some of the allegations, it is nevertheless true that in the area of administration of justice, the major problem has not always been that of intentional violation or indifference, but rather that of lack of resources with which to ensure observance of human rights. In this connection, the Ministers and Attorneys-General identified the following constraints which militate against full realization of Human Rights of the people of their States.

A. Police forces

Relations between the police and the public in most African countries are characterized by mutual distrust and, often, hostility. Instead of being viewed as protectors of the peace and servants of the people, the police are more often than not regarded as instruments of State brutality who are only

too ready to execute its orders but will turn a deaf ear and a blind eye to the legitimate needs of the population.

The fault does not, however, lie entirely with the police, nor indeed, the State itself: rather, it lies particularly with the limitation of means at the disposal of both. In the first instance, the police are poorly trained, ill-equipped, poorly paid and, consequently, poorly motivated. These deficiencies are themselves the consequence of lack of adequate resources by the State to prepare their police forces to assume their proper place in the administration of justice. To put a poorly trained, ill-equipped and poorly paid policeman at the first point of contact with human rights is to put these rights in jeopardy. Thus, if violations of human rights have occurred at this level of the administration of justice, as has been the case, they should mainly be understood in this context. It serves no purpose to point an accusing finger at anyone for all violations of human rights at the hands of the police without also addressing the urgent need to give assistance for their training, equipment and proper incentives such as adequate housing. There is need to inculcate in the mind of the police the importance of respect for human rights in their work. Training programmes are therefore essential if there is to be a change in their attitudes.

B. The judiciary

A great deal of what is good in a society can well be said to lie at the heart of its judiciary and in the hearts of its judges. A judiciary which is inefficient in the delivery of judicial services commits injustice and will eventually make the society in which it operates an unjust society. A judge is said to be the "salt of the society" because he flavours an otherwise ordinary society with his justice.

The judiciary in Africa labours under conditions which, with the best goodwill, render the delivery of efficient judicial services and, sometimes, justice itself, difficult if not impossible. The root causes of this are lack of adequate resources and poor motivation. Without exception, the halls of justice are far from the majority of the population they are supposed to serve. There is, therefore, need to decentralize courts to bring them closer to people, particularly in rural areas. The courts are also congested and woefully inadequate in terms of sanitary amenities. In terms of administrative facilities, the courts are not endowed with modern technologies for recording proceedings, storing and retrieving records and document reproduction devices. Libraries are also either archaic or inadequate.

Moreover, the key actors in the judiciary such as judges and registrars are, without exception, poorly remunerated in comparison with their counterparts in private practice. The consequence is then that the best talents in the profession are not attracted to the judiciary. The side effect of this is that the development of jurisprudence is stunted. Improperly remunerated judges are a ready target for unscrupulous overtures and, therefore, retailed justice.

The conditions which largely characterize the environment in which the judiciary functions in Africa today are a threat to human rights. Their existence is not the result of a deliberate policy of subversion by Governments of human rights, but rather the consequence of resource constraints which typify the dilemma of present-day Governments on this continent. Urgent assistance is accordingly required.

C. Prisons systems

The last stage in the process of determining the facts of an accused person in the course of the administration of justice is the prisons system. We are committed to attaining the standards set forth in the United Nations Standard Minimum Rules for the Treatment for Prisoners. What has already been said about resource constraints in regard to the police and the judiciary apply with equal force to prisons systems.

D. Capacity building in the offices of Attorneys-General/Ministries of Justice

The role of the Office of the Attorney-General/Ministry of Justice in the rendering of legal services to a Government presupposes that these key offices enjoy commensurate professional skills and are endowed with sufficient resources to enable them to discharge their mandate effectively. The truth is, however, that even though it is to these offices that the first attack for violation of human rights will be directed, they are typically the least endowed. For example, in terms of overseas aid, it is rarely the case that these offices are considered as a beneficiary. Even though law is arguably the most pervasive phenomenon in any society, it is never considered worthy of development assistance. The Office of the Attorney-General/Ministry of Justice, because of the key role it plays in human rights, whether that role is in advising on the constitution, the plethora of international instruments or the drafting of any law which touches on human rights, must have the capacity to respond effectively to these demands. Accordingly, it must not only have properly trained manpower, but such basic things as a properly stocked library and modern information systems must also be at its disposal.

E. Legal aid services

Poverty is a disabling condition. Its effects are never more acutely felt than when an individual comes face to face with the law. Liberty of the person and, sometimes, life itself, may well be at stake and may in fact be lost not because guilt has been established but because professional advice is wanting. A just law is not just if those to whom it applies receive it on the basis of their economic condition.

There is an urgent need to establish workable and sustainable legal aid schemes. It is unlikely that African Governments can achieve the goal of equal access to the law on their own as this is beyond their resources; accordingly, such a scheme would have to be largely funded by donors.

F. African Commission on Human Rights

The Commission has been established pursuant to the Organization for African Unity Charter on Human and Peoples' Rights. Its objective of promoting and protecting human rights on the African continent should be strengthened. It should deal with the pressing human rights in Africa to achieve this important task. We also look forward to the establishment of subregional arrangements to encourage observance of human rights standards.

G. Dumping of toxic waste

The human rights of the individual are undeniably important and their protection under various constitutions, laws and international instruments is clear and unambiguous. Equally important are the collective human rights of our populations. In this respect, it is noted that large populations of people on this continent have increasingly been exposed to toxic waste which is being dumped by developed countries. These acts constitute a violation of the human rights of the peoples of Africa.

IV. CONCLUSIONS

(a) We affirm the standards set forth in the International Bill of Human Rights and the African Charter on Human and Peoples' Rights. While affirming the universal validity of the international human rights standards it is nevertheless clear that the implementation of these standards must take account of the history, culture, traditions and values of each State. Equally, human rights and other internationally recognized rights are whole and indivisible and interdependent and, accordingly, none should take precedence over the rest.

(b) There is a special duty incumbent upon the chief legal advisers of Governments to ensure protection and promotion of human rights. While it is true that there have been many instances of violations of human rights in Africa, such violations are not necessarily deliberate: in many cases, they arise from constraints on the resources available to Governments for the administration of justice and to lack of knowledge about these rights. In order to improve the performance of African Governments in this area, assistance is needed urgently. Such assistance would be utilized in training and equiping the police; improving access to the judiciary and making its services more efficient; improving prison conditions in terms of infrastructure and training of personnel; building the capacity of Attorneys-General/Ministries of Justice to cope with the demand placed on them for efficiency in dealing with human rights matters; the establishment of legal aid services, etc.

(c) We call upon the Regional Meeting for Africa when it holds its meeting in Tunis to endorse item 7 (a) and (b) of the provisional agenda for inclusion in the agenda for the World Conference on Human Rights.

(d) We further call upon the said Regional Meeting for Africa to add a specific item on the agenda of the World Conference on Human Rights to deal with the type of assistance which we have called for in the Joint Statement.

It is the intention of the Ministers for Justice and Attorneys-General to have regular meetings of this nature and deal with common issues and assess progress made from time to time.

The list of the delegates and participants is attached to this Statement.

Dated at Nairobi this 7th day of October, 1992.

(Signed)	HON. S. AMOS WAKO	ATTORNEY-GENERAL, KENYA
	HON. ABU MAYANJA	DEPUTY PRIME MINISTER AND ATTORNEY-GENERAL, UGANDA
	HON. D.Z. LUBUVA	ATTORNEY-GENERAL, UNITED REPUBLIC OF TANZANIA
	HON. F.L. MAKUTA	MINISTER FOR JUSTICE, MALAWI
	HON. KELEBONE A. MAOPE	MINISTER OF JUSTICE, PRISONS AND ATTORNEY-GENERAL, LESOTHO
	HON. PATRICK CHINAMASA	ATTORNEY-GENERAL, ZIMBABWE
	HON. DR. Z.A. KHUMALO	MINISTER FOR JUSTICE, SWAZILAND
	HON. P.T.C. SKELEMANI	ATTORNEY-GENERAL, BOTSWANA

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